



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-M-R-P-

DATE: NOV. 5, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, and a subsequent motion, finding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits copies of previously submitted documents and requests that we review and consider her “added teaching experiences and . . . certification in the area of Special Education.”

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurship, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. PROCEDURAL BACKGROUND

At the time of filing her Form I-140, the Petitioner provided a cover letter stating that she sought "employment second preference classification as an alien of exceptional ability performing services prospectively in the national interest."³ In addition, she asserted that her supporting documentation demonstrated that she "satisfies the standards of an alien of exceptional ability seeking national interest waiver classification."

The Director issued a request for evidence (RFE) informing the Petitioner that her evidence did not satisfy at least three of the regulatory criteria for exceptional ability classification set forth at 8 C.F.R. § 204.5(k)(3)(ii). In addition, the RFE advised the Petitioner of the *Dhanasar* framework and explained why her documentation was not sufficient to demonstrate her eligibility for a national interest waiver.

After evaluating the evidence the Petitioner provided in response to the RFE, the Director denied the Form I-140, finding that she did not qualify for classification as an individual of exceptional ability and that she had not met the three prongs of the *Dhanasar* framework necessary to qualify for a national interest waiver. The Petitioner filed a subsequent motion to reopen, which the Director dismissed. The matter is now before us on appeal.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ In Part 2 of the form, she checked box 1.i. indicating that she was "[a]n alien applying for a National Interest Waiver (who IS a member of the professions holding an advanced degree or an alien of exceptional ability)." With respect to her eligibility as a member of the professions holding an advanced degree, we note that the Petitioner received her bachelor's degree in May 2015. As she received this degree less than five years ago, she does not have at least five years of progressive post-baccalaureate experience in her specialty equivalent to an advanced degree. See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).

III. ANALYSIS

A. Exceptional Ability

The Director found that the Petitioner had not established that she meets at least three of the exceptional ability evidentiary criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner asks that we consider her “added teaching experiences and [] certification in the area of Special Education.” With respect to her certification in special education from the [REDACTED] the Director already determined that this certification satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), which requires evidence of “[a] license to practice the profession or certification for a particular profession or occupation.”

Regarding her teaching experience, the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires “[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.” The record, however, indicates that the Petitioner did not begin working as a special education teacher until May 2015. As she has not demonstrated ten years of full-time experience in her occupation at the time this petition was filed, she does not meet this criterion.

The Petitioner’s appellate submission does not contest the Director’s stated reasons for denial or point to specific errors in the Director’s analysis of the remaining regulatory criteria. Accordingly, she has not established that she meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that she has achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The Director determined that the Petitioner had not met any of the three prongs of the *Dhanasar* framework and she does not specifically challenge those findings on appeal. With respect to the substantial merit and national importance of the proposed endeavor, the Petitioner indicates that she intends to continue her work as a special education teacher.⁴ With regard to her future plans, she states: “[M]y 5-year plan is to finish my master’s degree at [REDACTED] in the next two years and continue to teach in the [REDACTED] in the next five years.”

The record includes a letter from [REDACTED], principal of [REDACTED] stating that the Petitioner’s “math-based special education position ensures that our scholars with

⁴ At the time of filing, the Petitioner was employed as a special education teacher at [REDACTED] in [REDACTED]. From August 2017 until the present, she has worked as a mathematics teacher and special education case manager at [REDACTED] in [REDACTED]. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, USCIS will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

special needs receive the support they need to be successful in school, and thus become productive citizens in society. She currently teaches Probability and Statistics to our seniors, and manages 10 cases for students with individualized education plans” (IEPs). We find that the Petitioner’s proposed work teaching mathematics and managing students’ IEPs has substantial merit as it imparts valuable educational benefits and life skills to her pupils, and seeks to improve their academic performance.

To evaluate whether the Petitioner’s work satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. The relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor. *Id.*

In the present matter, the Petitioner’s evidence does not show that her proposed work has broader implications for her field, as opposed to being limited to the students at the school where she intends to teach. While the Petitioner asserts that the United States faces a shortage of special education teachers, this reported shortage does not render the work of an individual teacher nationally important under the *Dhanasar* framework.⁵ In general, the value of qualified teachers to U.S. national educational initiatives is collective, and the Petitioner has not shown that her proposed work stands to have wider implications in the field of special education.

The Petitioner’s documentation is not sufficient to demonstrate that her proposed endeavor is of national importance. While we acknowledge the merits of her work to create a positive learning environment and improve her students’ academic proficiency, the record does not demonstrate that the Petitioner’s instructional and case management activities offer benefits that extend beyond her school to impact the field of special education more broadly.⁶

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

IV. CONCLUSION

The Petitioner has not established eligibility for EB-2 classification as an individual of exceptional ability. Furthermore, as she has not met the requisite first prong of the *Dhanasar* analytical framework,

⁵ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

⁶ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

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we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of J-M-R-P-*, ID# 1728093 (AAO Nov. 5, 2018)